SUPREME COURT, U. S.

FILED

JAN 13 1975

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-785

CHARLES EVES and FERN EVES,
Petitioners,

v.

FORD MOTOR COMPANY and NATIONAL COOPERATIVES, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT

National Cooperatives, Inc., in Opposition

JACK N. VAN STONE
103 N. W. Tenth Street
Evansville, Indiana 47708

GAYLON L. CLARK
215 N. W. Seventh Street
Evansville, Indiana 47708

Attorneys for Respondent National Cooperatives, Inc.

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutory provisions involved	2
Constitutional provisions involved	2
Statement of the case	2
Argument	3
Conclusion	7

Table of Cases

Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers, et al. (1970), 398 U.S. 281, 286, 90 Supreme Court 1739, 26 L. Ed. 2d 234	6
Lee v. Terminal Transport Co., 282 F(2d) 805 (7 Cir. 1960), cert. den. 365 U.S. 828, 5 L. Ed. 2d 705, 81 S.Ct. 713	4
Progress Development Corporation v. Mitchell (7 Cir. 1961), 286 Fed. 2d 222	4
Slater v. Stoffel, 7th Cir. 1969, 411 Fed. 2d 653	4

Statute

28 U.S.C. § 2283 ..... 2, 3, 4, 7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. .....

CHARLES EVES and FERN EVES,
Petitioners,

v.

FORD MOTOR COMPANY and NATIONAL COOPERATIVES, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT

National Cooperatives, Inc., in Opposition

OPINION BELOW

Petitioner's statement of opinion below is correct.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

May a United States District Court, after hearing evidence on an issue, sustaining defendants motion for directed verdicts at the close of the Plaintiff's evidence and entering a final judgment in favor of defendants thereon, which judgment was appealed to the Circuit Court of Appeals, sustained and not appealed from, issue an injunction in aid of its jurisdiction and to effectuate its judgment, ordering Plaintiff be enjoined from prosecuting the identical cause of action in a State Court.

STATUTORY PROVISIONS INVOLVED

Petitioner has omitted a portion of U. S. Code, Title 28, Section 2283. The entire text of said provision with the omitted part emphasized is as follows:

> "A Court of the United States may not grant an injunction to stay proceedings in a State Court except where expressly authorized by an Act of Congress, or where necessary in aid *of its jurisdiction or to protect or effectuate* its judgment."

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent suggests the only basis for involvement of a constitutional provision in this matter is the fact that it does authorize the creation of a federal judiciary.

STATEMENT OF THE CASE

Respondent accepts Petitioner's statement of the case.

ARGUMENT

Petitioner states the first question presented as:

> "Can a United States District Court review a decision of a State Appellate Court?"

Respondent agrees with petitioner that the answer to that question is, no, but having agreed with the answer, respondent insists the question is not the issue in this action.

Petitioners' second question is:

> "In the event of a conflict between the State and Federal judiciaries lower than the United States Supreme Court, which should yield?"

Probably many volumes could be written in an attempt to resolve this philosophical, sociological question but such is unnecessary in this cause.

Here a judgment was entered by the United States District Court against petitioners, appealed to United States Circuit Court of Appeals, there affirmed and appealed no further. The issue of the validity of such judgment cannot now be questioned.

The only issue is whether the injunction issued by the District Court against petitioners from further proceedings in the State Court in aid of its jurisdiction and to effectuate and enforce its judgment, is valid pursuant to United States Code, Title 28, Section 2283. That is clearly the sole question in this matter.

Petitioner does not contend the judgment on which the injunction is based was invalid.

The U. S. District Court did not attempt to review any State Appellate Court decision in issuing its injunction. The injunc-

tion was issued on the basis of the unappealed from affirmation by the Seventh Circuit Court of Appeals of the validity of the District Court's judgment on trial of the cause. Such affirmation is contained in the Seventh Circuit Court of Appeals decision which is set out as Appendix B on Page A5 of petitioners' brief. Petitioners sought no review of the Seventh Circuit Court's affirmance of the District Court's judgment and such judgment is therefore conclusive on the merits of petitioners' cause of action.

Numerous cases have been decided which recognize the necessity of the use of USC Title 28, Section 2283 in the so-called "relitigation cases."

The case of *Lee v. Terminal Transport Co.*, 282 F(2d) 805 (7 Cir. 1960), cert. den. 365 U.S. 828, 5 L. Ed. 2d 705, 81 S.Ct. 713, upheld the District Court in granting an injunction against a State Court from permitting claimant to litigate therein the right to recover interest on a judgment rendered in the District Court, upon which the District Court had not awarded interest.

The question is not whether the U. S. District Court has the naked power to issue such an injunction but rather, whether or not such injunction should in fact be issued.

In the case of *Slater v. Stoffel*, 7th Cir. 1969, 411 Fed. 2d 653, p. 655, it was stated:

> "The question before us is whether there has been an abuse of discretion. *Progress Development Corporation v. Mitchell* (7 Cir. 1961), 286 Fed. 2d 222, 229, and cases there cited. We find no abuse of discretion in the denial of the injunctive relief in this case."

The question involved in the Slater case was the right of a party to bring an action against an estate under an Indiana

statute prohibiting an action from being filed more than six months after the first notice to creditors was published. The sole question in the case was that issue. While the proceedings progressed the Indiana statute was changed, permitting an action to be brought at any time within the two year statute of limitations for tort.

There was no hearing nor presentation of evidence on the merits of plaintiffs' suit. The sole issue was whether or not there was a right to bring any action after a very limited period of time, because of the prior statutory prohibition.

The District Court refused to enjoin the State Court from proceeding and the Seventh Circuit Court said that such holding was not an abuse of the District Court's discretion.

Since the District Court has some discretion as to whether or not such an injunction should issue, it appears that Courts on appeal should give considerable weight to the action of the District Court. In the present case the District Court heard all of plaintiffs' evidence in the trial where the initial judgment was entered; is in a position to judge whether or not petitioners had an opportunity to fairly and fully present their evidence; and has knowledge of the manner in which the proceedings terminated in a judgment in favor of the defendants.

Petitioners have fully tried this cause of action against both defendants and further, as to the defendant National Cooperatives, Inc. petitioner admitted in her Brief in the first appeal to the Seventh Circuit Court of Appeals as follows:

> "As to the defendant appellee National Cooperatives, the plaintiffs' only contention is that the Court erred in dismissing on the basis of a lack of jurisdictional amount. This will be incorporated in the appropriate section of the argument. The plaintiffs are appealing no other issue re-

garding that defendant and for the rest of the Brief the word "defendant" refers to Ford Motor Company."

The Seventh Circuit Court of Appeals ordered a dismissal of the cause of action as to the defendant, National Cooperatives, Inc., by its order of May 28, 1971, petitioners Appendix C, page A10. By the petitioners own admission they cannot make a case against National Cooperatives, Inc. in a State Court, and did not do so in the United States District Court. The futility of permitting this litigation to be further extended is self evident.

Petitioners contend that the United States District Court possesses no power to sit in direct review of the State Court's decision.

Petitioner relies on *Atlantic Coast Line Railroad Company v Brotherhood of Locomotive Engineers, et al.* (1970), 398 U.S. 281, 286, 90 Supreme Court 1739, 26 L. Ed. 2d 234, in support of this contention. That case held that a District Court could not restrain a State Court from issuing an injunction under a State law against picketing where the District Court had never had any issue under the State law presented to it.

Here petitioners sued defendants in tort, an issue triable in either State or Federal Court. Petitioners chose the Federal forum, lost, and now seek to relitigate the exact issues in the tort again in State Court, after a validity of its own judgment.

The issues having been tried and respondents having won are entitled to have their judgment enforced. This the District Court has done by its injunction. It is reviewing no action of the State Court but rather asserting the validity of its own judgment.

In Respondents' petition for injunction there is no request for a review by any Federal Court of the State Court's decision.

The request is that the petitioners therein be prohibited from proceeding further with any State Court action because they fully presented all issues in these cases in the United States District Court, the forum which was chosen by the petitioners. They received a review in the Seventh Circuit Court of Appeals of all issues which they contended were error in the conduct of the trial in the United States District Court. The 7th Circuit has affirmed the judgment of the United States District Court. The injunction granted petitioners by the United States District Court seeks to protect that very judgment.

We seek no review of the State Courts rulings or proceedings. We merely seek to preclude the State Court from further proceedings because the petitioners have had their cause of action fully tried and adjudicated by the United States District Court reviewed and affirmed by the Seventh Circuit Court of Appeals and from which affirmation petitioners sought no review.

CONCLUSION

The judgment of the District Court in returning verdicts for the defendant at the close of the plaintiffs' evidence on Motions for Directed Verdicts submitted by the defendants was correct and within the jurisdiction of the Court. That Court has authority by virtue of the USC, Title 28, Section 2283, to protect such judgment by injunction. The injunction which has been issued by the United States District Court enjoining petitioners from proceeding further in the State Court is within its statutory power, is not an abuse of discretion of the Court and was issued solely in order to protect and effectuate the previous valid judgment entered by the Court.

There is no attempt by Federal Judiciary to review any State Appellate Court decision.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted

JACK N. VAN STONE
103 N. W. Tenth Street
Evansville, Indiana 47708

GAYLON L. CLARK
215 N. W. Seventh Street
Evansville, Indiana 47708

Attorneys for Respondent
National Cooperatives, Inc.